

## PROTECTION OF TRADEMARKS IN CHINA

*Exchange of notes at Peking December 6, 1905; related note of  
January 22, 1906*

*Entered into force December 6, 1905*

*Obsolete*<sup>1</sup>

Treaty Series 481

*The American Minister to the German Minister*

DECEMBER 6, 1905

MR. MINISTER AND DEAR COLLEAGUE: The Government of the United States being desirous of reaching an understanding with the Government of Germany for the reciprocal protection against infringement in China by citizens and subjects of our respective nations of trade marks duly registered in the United States and Germany, I am authorized by the Secretary of State of the United States to inform you that effectual provision exists in American Consular Courts in China for the trial and punishment of all persons subject to the jurisdiction of the United States who may be charged with and found guilty of infringing in any way trade marks of persons subject to the jurisdiction of Germany which have been duly registered in the United States.

I beg that you will kindly inform me whether American citizens are entitled to the same legal remedies in the Consular Courts of Germany in China as regards the protection from infringement of their trade marks duly registered in Germany.

I have the honor to be, Mr. Minister and dear Colleague, Your obedient servant,

W. W. ROCKHILL

HIS EXCELLENCY, BARON VON MUMM,  
*etc., etc., etc.*

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<sup>1</sup> See arts. 128-134 of Treaty of Versailles signed June 28, 1919 (*ante*, vol. 2, p. 108).

*The German Minister to the American Minister*

[TRANSLATION]

IMPERIAL GERMAN LEGATION

*Peking, December 6, 1905*

MR. MINISTER: I have the honor to acknowledge the receipt of your letter of this date informing me that you have been authorized by your Government to effect with me, by an exchange of notes, an agreement for the reciprocal protection against infringement in China by citizens and subjects of our respective nations of trade marks duly registered in Germany and the United States.

You furthermore inform me that effectual provision exists in American Consular Courts in China for the trial and punishment of all persons subject to the jurisdiction of the United States who may be charged with and found guilty of infringing in any way trade marks of persons subject to the jurisdiction of Germany which have been duly registered in the United States.

I have the honor to inform you in reply that I have been authorized by the Chancellor of the German Empire to enter into this reciprocal agreement, and to state that German Consular Courts in China are empowered under the German law for the protection of trade marks of May 12th, 1894, to prosecute and punish all persons subject to their jurisdiction for infringement of trade marks the property of persons coming under the jurisdiction of the United States when duly registered in Germany.

Furthermore, for the purpose of putting this arrangement into effect, I am authorized and ready to instruct the German Consular representatives in China in accordance therewith, subject to your taking similar action.

I avail myself of this opportunity to renew the assurances of my highest consideration.

A. v. MUMM

HON. W. W. ROCKHILL,  
*etc., etc., etc.*

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*The American Minister to the German Minister**PEKING, January 22, 1906*

MR. MINISTER AND DEAR COLLEAGUE: In connection with the notes which I had the honor to exchange with Your Excellency on December 6, 1905, looking to the reciprocal protection from infringement by our respective nationals in China of trade marks belonging to them I duly transmitted copies of the same to my Government.

In reply the Secretary of State has called to my attention, as possibly misleading, the use made in my note to you of the word "punishment" by

our Consular Courts in China of American citizens who may have infringed in China trade marks the property of persons under the jurisdiction of Germany.

In view of the fact that there is no statute in the United States making the infringement, counterfeiting, etc. of a trade mark a criminal offense, and that effectual provision exists by a civil action for damages by the owner of a trade mark, my Government is of the opinion that the word "punishment" should be understood to refer to a civil action only, and not to a criminal procedure, as might be inferred from the use of the word in question without the present explanation added thereto.

I beg leave to call Your Excellency's attention to the above provision of our law, so that nothing in my note of December 6th, last, may be construed as conflicting therewith.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

W. W. ROCKHILL

To His Excellency BARON VON MUMM,  
*etc., etc., etc.*